

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

NEXTGEAR CAPITAL, INC.,

Plaintiff,

v.

CNG AUTO GROUP, INC. d/b/a TOP  
WHEELS; ELONTO R. HERNANDEZ COLON;  
and JULISSA M. FUENTES RIVERA,

Defendants.

CIVIL NO. 15-1824

Breach of Contract,  
Collection of Monies,  
Repossession of Personal Property

**CLERK'S WRIT TO MARSHAL**  
**TO SEIZE AND IMPOUND VEHICLES**

**TO THE MARSHAL  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

An order of the Honorable Judge Jay A. Garcia-Gregory, Judge of the United States District Court for the District of Puerto Rico, has been issued which literally states as follows:

Upon the consideration Plaintiff's, NextGear Capital, Inc. ("NextGear" or "Plaintiff"), *Ex Parte Emergency Motion for Replevin*, as well as the Complaint, its Exhibits, the Declaration of Angel M. García Rodríguez, and the provisions of Fed. R. Civ. P. 64:

1. This Court finds it has jurisdiction over Plaintiff and Defendants and the subject matter of this action.

2. Plaintiff showed that it has registered legal rights over the 31 vehicles that constitute the collateral that secures the loan that NextGear extended to Defendant CNG Auto Group Inc. d/b/a Top Wheels ("Top Wheels") pursuant to the Demand Promissory Note and Loan and Security Agreement executed by the parties on August 1, 2014 (the "Agreement").

3. Plaintiff submitted a Declaration showing that the Defendants are in default of their contractual obligations and are wrongfully detaining the referenced vehicles.

4. Plaintiff is likely to prevail on its claims of breach of contract and collection of monies.

5. Plaintiff is suffering, or is at risk of suffering, immediate and irreparable injury as a result of the Defendants' offer for sale out of trust sale of the aforementioned automobiles. Plaintiff could suffer or continue to suffer irreparable harm and injury if an Order for Replevin is not issued.

6. It is impractical to give notice to the Defendants prior to the issuance of an Order for Replevin because of the likelihood that the Defendants or persons acting in concert or association with them, will move, secrete, or destroy the vehicles and their related documents, records, and evidence, if given notice.

7. The entry of any Order other than an Order for Replevin without notice will be inadequate to protect the rights of the Plaintiff.

8. Plaintiff has not publicized its proposed Order for Replevin.

9. The matters subject of the seizure shall be at the location identified more specifically below and includes the Defendants' place of business.

10. The potential harm that may be caused to the Defendants is not sufficient to preclude the Court from issuing this Order for Replevin.

11. The equities in this matter weigh heavily in favor of the Plaintiff and for the issuance of this Order for Replevin.

12. The public interest as is embodied in the Puerto Rico Commercial Transactions Act will be furthered by the issuance of this Order for Replevin.

**REPLEVIN**

It is therefore: **ORDERED** that the United States Marshal for the District, or one or more of his deputies, or, if the United States Marshal or such deputies are unavailable, other local law enforcement officers, assisted by one or more attorneys, agents, employees and/or investigators authorized by Plaintiff shall search, seize, and impound within the Defendants' places of business, any and all of the following which is in the possession, custody or control of the Defendants:

- 1) 2012 Gray Porsche Cayenne, VIN: A01595;
- 2) 2012 White Mercedes C Class, VIN: 607266;
- 3) 2010 Gray Ford Escape, VIN: B24611;
- 4) 2012 White Mercedes Sprinter, VIN: 636749;
- 5) 2013 Blue Hyundai Accent, VIN: 388867;
- 6) 2013 Blue Nissan Versa, VIN: 822250;
- 7) 2013 Gray Nissan Versa, VIN: 822212;
- 8) 2013 Blue Nissan Versa, VIN: 832081;
- 9) 2013 Blue Nissan Versa, VIN: 840027;
- 10) 2013 Gray Nissan Versa, VIN: 832140;
- 11) 2013 White Ford Fiesta, VIN: 161404;
- 12) 2013 Red Ford Fiesta, VIN: 161411;
- 13) 2013 Silver Kia Forte, VIN: 716621;
- 14) 2013 Gold Kia Forte, VIN: 716633;
- 15) 2013 Blue Kia Forte, VIN: 716642;
- 16) 2014 Red Toyota Yaris, VIN: 588986;
- 17) 2010 Blue Mini Cooper, VIN: U97622;
- 18) 2008 Black Mercedes C Class, VIN: 050483;
- 19) 2013 Orange Hyundai Veloster, VIN: 149841;

- 20) 2003 Orange Hummer H2, VIN: 103121;
- 21) 2013 Red Nissan Frontier, VIN: 731930;
- 22) 2011 White Ford Escape, VIN: B38063;
- 23) 2012 Gray Toyota Yaris, VIN: 419656;
- 24) 2013 Blue Hyundai Accent, VIN: 545696;
- 25) 2012 Ford Fiesta (unknown color), VIN: 123287;
- 26) 2011 White Toyota FJ Cruiser, VIN: 010898;
- 27) 2009 White Mercedes R Class, VIN: 092468;
- 28) 2014 Gray Toyota Tacoma, VIN: 051359;
- 29) 2008 White Mercedes S Class, VIN: 205959;
- 30) 2012 Blue Mini Cooper, VIN: 488852;
- 31) 2013 Green Jeep Wrangler, VIN: 581339.

**ORDERED** that any agent or employee of Defendants approached during the seizure ordered above shall immediately identify himself or herself, giving their current address, and showing picture identification if they possess the same.

**ORDERED** that all such impounded vehicles seized by the United States Marshal or his deputies, will be delivered to the custody of Manheim Caribbean Subastas De Autos (Luchetti Ind. Subdivision, 305 State Rd #5, Lot A, Bayamón, PR 00961), pending further order of this Court; and it is further

**ORDERED** that any person who impedes the service of process of this Order, or the execution of this Order, is subject to arrest by the United States Marshal, or his deputies, or other law enforcement officer; and it is further

**ORDERED** that to the extent necessary to effect the seizure and impoundment ordered hereinabove, the United States Marshal or other law enforcement officer may use such force as may be reasonably necessary including, but not limited to, breaking locks so as to enter storage areas or buildings, vans or

other vehicles, as described in this Order; and it is further

**ORDERED** that personal service of the Summons and the Complaint and of this Order, together with copies of the papers in support thereof, may be made by the U.S. Marshal or other law enforcement or by Plaintiff's attorneys or their duly qualified agents or employees on the Defendant or their agents or employees operating out of the above location and that such service shall be deemed sufficient service; and it is further

**ORDERED** that Plaintiff's agents shall promptly inspect the vehicles seized, and if any of them are not on the above list, such vehicles are to be returned to Defendants within fourteen (14) days of the date of the seizure; and it is further

**IT IS FURTHER ORDERED** that the Defendants shall show cause on or before Friday, August 14, 2015 in the United States District Court for the District of Puerto Rico before Judge Jay A. Garcia-Gregory, or as soon thereafter as the parties and/or their attorneys can be heard by the Court, why an Order should not be issued granting the Plaintiff authorization to dispose of the repossessed property as provided in the Puerto Rico Commercial Transactions Act.

The Court has granted the foregoing Order without prior written or oral notice to Defendants for the reasons set forth above. There is a substantial likelihood that the Defendants' offer for sale or out of trust sale of the lien vehicles will cause and has caused the Plaintiff to suffer immediate and irreparable injury and harm. Such injury and harm includes the loss of income, and interference with Plaintiff's rights pursuant to the parties' Agreement.

This Replevin Order has been granted *ex parte* because it is the sole method of preserving the current state of affairs and, further, is the sole means whereby the Court can provide effective final relief. If notice were required, such notice might well render fruitless further prosecution of this action. Specifically, the lien vehicles may disappear, be secreted, or surreptitiously transferred to some other entity for subsequent sale. In sum, giving the Defendants notice of the Order for Replevin could result in an inability to provide any relief at all.

**ORDERED** this 12<sup>th</sup> day of August, 2015.

S/ Jay A. Garcia-Gregory

**UNITED STATES DISTRICT JUDGE**

**WHEREFORE** you are hereby directed to:

(a) seize, subject to further order of this Court, using such force as may reasonably be necessary in the premises:

i) any and all vehicles set forth in the Order;

ii) to the extent necessary to effect the seizure and impoundment ordered hereinabove, use such force as may be reasonably necessary including, but not limited to breaking locks so as to enter storage areas or buildings, as described in the order, and,

(b) inventory all vehicles and transfer such articles to the custody of Manheim Caribbean Subastas De Autos (Luchetti Ind. Subdivision, 305 State Rd #5, Lot A, Bayamón, PR 00961) pending a further Order of this Court;


c) that representatives of Plaintiff, and of Plaintiff's counsel, may be present and may assist you during the execution of this Writ;

d) that you serve upon the Defendants a copy of the Writ, and of the Order of this Court, and all of the several documents upon which such Order is based as recited in such Order

including summons and Complaint, by delivering the same to Defendants personally, if Defendants can be found within the district, or if Defendants cannot there be found, to any agent of said Defendants or to the person from whose possession the articles are taken, or if said person cannot be found, and if no such agent of Defendants can there be found, then by leaving such copies at the usual place of business of Defendants, or of any agent of Defendants, or at the place where such articles are found, with any person of suitable age and discretion, and that you make immediate return of such service and of such seizure or attempted seizure to this Court.

At San Juan, Puerto Rico, on this 12<sup>th</sup> day of August, 2015.

**CLERK OF THE UNITED STATES  
DISTRICT COURT FOR THE  
DISTRICT  
OF PUERTO RICO**

By: \_\_\_\_\_  
Deputy Clerk